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NATIONAL ENERGY BOARD REASONS FOR DECISION

In The Matter of the Application
for an Order Under Sections 11 and 12
of the National Energy Board Act

of



West Kootenay Power and Light Company, Limited

March 1986

NATIONAL ENERGY BOARD

REASONS FOR DECISION

IN THE MATTER OF an Application by West Kootenay Power and Light Company, Limited pursuant to sections 11 and 12 of the National Energy Board Act for an Order directing British Columbia Hydro and Power Authority to comply with the conditions of Licence EL-163.

CONSIDERED BY the Board in Ottawa, Ontario at its meeting on 20 March 1986.

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BACKGROUND

West Kootenay Power and Light Company, Limited ("West Kootenay"), a wholly-owned subsidiary of Cominco Limited ("Cominco"), is an electric utility which generates, distributes and retails electricity in southeastern British Columbia. West Kootenay is a regulated utility under the jurisdiction of British Columbia provincial authorities. It is interconnected with British Columbia Hydro and Power Authority ("B.C. Hydro") and Bonneville Power Administration in the United States.

The demand in the West Kootenay service area has grown steadily and is forecast to continue to grow. West Kootenay's generation facilities are sufficient to meet the demand on its system for most of the time but, increasingly, West Kootenay requires additional supplies which it purchases from several sources including B.C. Hydro. West Kootenay has purchased power from B.C. Hydro under flexible supply arrangements such as Schedule 3807, which bind B.C. Hydro to supply capacity and energy in the months of November through March and bind West Kootenay to pay at specified rates for nominated amounts of capacity and any energy which it chooses to take.

As a result of testimony given at the last several public hearings before the National Energy Board ("the Board") on applications by B.C. Hydro and Cominco, the Board is aware that West Kootenay and B.C. Hydro have been negotiating for several years a long term agreement for supply to West Kootenay. The evidence shows that negotiations are still incomplete.

THE APPLICATION

Application of West Kootenay

By an application dated 30 December 1985, West Kootenay applied to the Board for an Order pursuant to Sections 11 and 12 of the National Energy Board Act directing B.C. Hydro to comply, retroactively from December 1984, with the conditions of Licence EL-163 by offering to West Kootenay a part or all of the interruptible energy exported under Licence EL-163 under the same terms and conditions, including price, as that of the export, adjusted for differences in the cost of delivery, until the end of the contract period. Specifically, West Kootenay stated that B.C. Hydro was in violation of Condition 6(c) of Licence EL-163.

Evidence was provided by West Kootenay in its Application to show that BC Hydro commenced on 27 December 1984 to export 10 MW.h/hr of interruptible energy to Snohomish Public Utility District ("Snohomish") at a price of 8.5 mills/KW.h (U.S.) which was a lower price than that at which West Kootenay could have purchased energy from B.C. Hydro under the Ad Hoc agreement. West Kootenay asked B.C. Hydro on 27 December 1984 to allow West Kootenay to participate in the sale and B.C. Hydro refused.

Position of B.C. Hydro

Evidence was provided by BC Hydro that it had declined to allow West Kootenay to purchase energy at the same price as that of the export to Snohomish.

B.C. Hydro stated that, under the existing tariffs ordered by the British Columbia Utilities Commission, B.C. Hydro is obliged to, and has, reserved firm capacity and energy for West Kootenay, thereby limiting B.C. Hydro's opportunities to increase revenue from exports or any other sales. Although West Kootenay has no obligation to purchase energy under the existing tariffs, there is nevertheless an obligation on B.C. Hydro's part to reserve for West Kootenay's firm capacity and energy nominations. Consequently B.C. Hydro argued that if it were obliged to make sales to West Kootenay based upon the interpretation which West Kootenay placed on Licence EL-163, then B.C. Hydro would be doubly penalized in that it would have to maintain reserves to meet its obligations to West Kootenay under the existing tariff while also being obliged to sell to West Kootenay under the terms of the Board's interruptible licence.

BC Hydro stated that it was not willing to supply lower priced interruptible energy to West Kootenay if that supply would displace firm higher priced energy which would otherwise be purchased by West Kootenay from B.C. Hydro. In addition, the position of B.C. Hydro was that such a sale would not be made on the same terms and conditions as those of the export and Condition 6(c) does not, in the view of B.C. Hydro, require B.C. Hydro to make the Snohomish export available to West Kootenay.

THE BOARD'S DECISION AND REASONS FOR DECISION

The Board has carefully considered the application of West Kootenay dated 30 December 1985, the letters dated 16 January 1986 and 21 February 1986 from BC Hydro and the letter from West Kootenay dated 28 February.

The Board has not taken into consideration the letter from B.C. Hydro dated 3 March 1986 because the procedures set down by the Board in its 13 February 1986 letter gave West Kootenay the right of final reply, which it did in its letter of 28 February.

At the public hearing in Vancouver on 26-30 March 1984 which preceded the issuance of Licence EL-163 to BC Hydro, the Board heard extensive evidence and argument from West Kootenay and BC Hydro on the matter of West Kootenay's right to intercept interruptible energy exports of BC Hydro. The Board decided it was unnecessary to hold another public hearing to deal with West Kootenay's 30 December application.

Utilization of Exported Power

Condition 6(c) of Licence EL-163 states:

6. The Licensee shall not export power and/or energy hereunder whenever and to whatever extent such power and/or energy is required to supply
 - a).....
 - b).....
 - c) any electric utility in British Columbia or Alberta willing to buy part or all of the energy under the same terms and conditions, including price, as that of the export, adjusted for differences in the cost of delivery, until the end of the contract period, unless otherwise mutually agreed by the Licensee and the Canadian utility.

The key question to be determined is whether the "same terms and conditions, including price" include the use to which the energy would be put by the purchaser for example, the displacement of higher priced energy.

It was not the Board's intention when it drafted Condition 6(c) of Licence EL-163 to limit a Canadian utility's right to intercept exports by considerations related either to the utilization of the energy by the United States purchaser in the United States or to the utilization of the energy in Canada by the utility which might choose to intercept the export.

For this reason it is the view of the Board that the phrase "same terms and conditions, including price" does not include the use to which exported energy is put.

Impact on B.C. Hydro

The price and non-monetary terms and conditions applicable to interruptible energy exports could not be established when Licence EL-163 was issued. Consequently, the Board inserted condition 6(c) of Licence EL-163 to place the onus on the intercepting utility to determine whether the combined terms and conditions, including price, of the export are attractive to it.

B.C. Hydro claims that, because of the existing tariffs ordered by the B.C. Utilities Commission, it is obliged to reserve firm capacity and energy nominations for West Kootenay even though West Kootenay has no obligation to purchase energy. B.C. Hydro further claimed that it would be doubly penalized by maintaining reservations to meet its obligations under Schedule 3807 while being obliged to sell to West Kootenay under the terms of Licence EL-163.

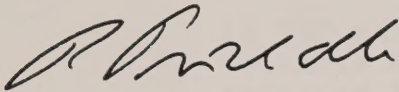
The matter of B.C. Hydro's obligations to provide reserve capacity nominations to West Kootenay is under provincial jurisdiction. In the Board's view, any such obligations ordered by the provincial authorities should not limit West Kootenay's rights or B.C. Hydro's obligations under Condition 6(c) of Licence EL-163.

Request for Retroactivity

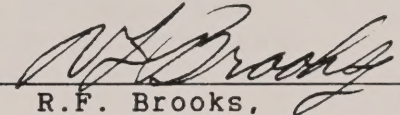
Analysis of the evidence shows clearly the financial incentive for West Kootenay to seek to intercept exports under Licence EL-163 and to request the Board to order B.C. Hydro to comply retroactively from December 1984, with the conditions of Licence EL-163. After careful consideration of this matter, the Board has concluded that it does not have the jurisdiction under the National Energy Board Act to grant the retroactive order requested or to order compensation to West Kootenay.

CONCLUSIONS

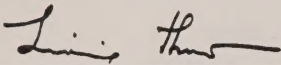
For the reasons stated in the previous sections, the Board will issue the Order sought by West Kootenay, to be effective from the date of issue. Order MO-49-86 is attached to these Reasons for Decision.



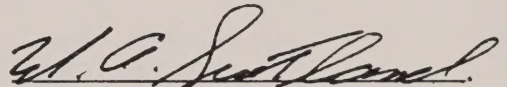
R. Priddle,
Chairman



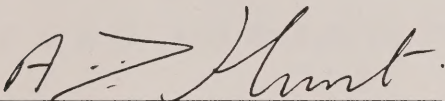
R.F. Brooks,
Vice-Chairman



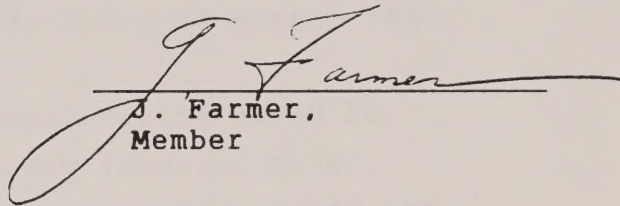
L.M. Thur,
Associate Vice-Chairman



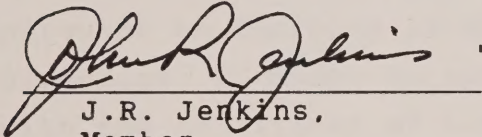
W.A. Scotland,
Associate Vice-Chairman



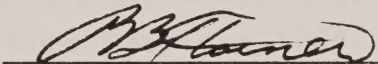
A.D. Hunt,
Associate Vice-Chairman



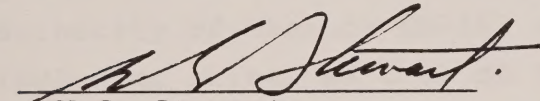
J. Farmer,
Member



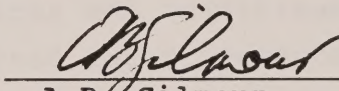
J.R. Jenkins,
Member



R.B. Horner,
Member



W.G. Stewart,
Member



A.B. Gilmour,
Member

Ottawa, Canada
March, 1986



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ORDER NO. MO-49-86

IN THE MATTER OF the National Energy Board Act
and the Regulations made thereunder; and

IN THE MATTER OF the exportation by British
Columbia Hydro and Power Authority (hereinafter
referred to as "BC Hydro") of energy to Snohomish
Public Utility District under Licence EL-163; and

IN THE MATTER OF the exportation by BC Hydro of
interruptible energy under Licence EL-163; and

IN THE MATTER OF an application by West Kootenay
Power and Light Company, Limited (hereinafter
referred to as "West Kootenay") dated 30 December, 1985.
File No. 1923-W1-2.

B E F O R E the Board on Thursday, the 20th day of March, 1986.

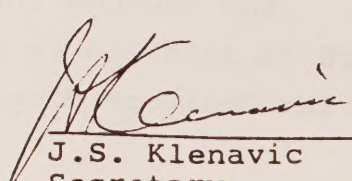
WHEREAS West Kootenay, by an application dated 30
December, 1985, has requested that the Board issue an order,
pursuant to Sections 11 and 12 of the National Energy Board Act,
directing BC Hydro to comply, retroactively from December 1984,
with the conditions of Licence EL-163 by offering to West Kootenay
a part or all of the interruptible energy exported under the
authority of Licence EL-163 under the same terms and conditions,
including price, as that of the export, adjusted for differences
in the cost of delivery, until the end of the contract period;

AND WHEREAS the Board has considered the written
submissions of West Kootenay and BC Hydro;

AND WHEREAS the Reasons for Decision and decision of
the Board in relation to the application are set out in its
Reasons for Decision dated March 1986;

IT IS ORDERED THAT B.C. Hydro shall, from the date of this Order, comply with Condition 6(c) of Licence EL-163 by supplying any power and/or energy exported under that Licence, including exports to the Snohomish Public Utility District, to West Kootenay and any other electric utility in British Columbia or Alberta willing to buy part or all of the energy being exported under that Licence in accordance with the terms and conditions set out in Condition 6(c) of Licence EL-163 as interpreted by the Board in its March 1986 Reasons for Decision.

NATIONAL ENERGY BOARD



J.S. Klenavic
Secretary

